Editor's note: Modified and distinguished -- See Celsius Energy Co. 99 IBLA 53, 94 I.D. 394 (Sept. 8, 1987)

BASS ENTERPRISES PRODUCTION CO.

IBLA 80-6 Decided April 14, 1980

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, holding oil and gas lease NM 15092 terminated for nonpayment of rental.

Affirmed as modified.

1. Oil and Gas Leases: Discovery -- Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination -- Oil and Gas Leases: Unit and Cooperative Agreements -- Rent

   The automatic termination provision of 30 U.S.C. § 188(b) (1976) is applicable to a lease whose lands formed part of a unit upon which production has at all times been maintained, but were thereafter eliminated therefrom and simultaneously segregated by reason of their inclusion in a second unit, since terminated.

APPEARANCES: George H. Hunker, Jr., Esq., Hunker-Fedric, P.A., Roswell, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Bass Enterprises Production Company (Bass) appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated August 24, 1979, holding oil and gas lease NM 15092 terminated for nonpayment of rental. BLM's decision was based on 30 U.S.C. § 188(b) (1976), which states that a lease on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law upon the failure of a lessee to pay rental on or before the anniversary date of the lease. Bass contends that the automatic termination provisions of section 188(b) do not apply to lease NM 15092, a contention which requires us to examine this lease in some detail.

Lease NM 024368 was issued on February 1, 1957, to Vincent Cuccia and George E. Conley for a term of 5 years and was thereafter extended for an additional 5 years to January 31, 1967. This lease included the following lands, inter alia, in Lea County, New Mexico:

T. 25 S., R. 33 E., New Mexico principal meridian
sec. 28: W 1/2
sec. 29: W 1/2
sec. 33: NW 1/4

Those lands were segregated into lease NM 024368-A following a partial assignment.

Prior to the expiration of its extended term, lease NM 024368-A was committed to the Red Hills Unit Agreement. 1/ Production was established on the Red Hills Unit, and production is being allocated to the NW 1/4 sec. 33 pursuant to the plan of operations. The NW 1/4 sec. 33 is included in the unit participating area.

By mesne conveyances, lease NM 024368-A was acquired by appellant 2/ and, effective September 30, 1971, was reunitized in part. This reunitization caused a contraction of the Red Hills Unit by eliminating therefrom the W 1/2 of secs. 28 and 29, T. 25 S., R. 33 E., New Mexico principal meridian. The acreage eliminated from the Red Hills Unit was thereupon committed to the Vaca Draw Unit Agreement, 3/ effective September 30, 1971.

The commitment of less than all of the acreage of lease NM 024368-A to the Vaca Draw Unit caused a segregation of this lease into two separate leases. 30 U.S.C. § 226(j) (1976). One, NM 024368-A including NW 1/4 sec. 33, lands in the Red Hills unit, and one, NM 15092, including W 1/2 of sec. 28 and W 1/2 sec. 29, lands in the Vaca Draw Unit. 4/

Shortly thereafter on May 12, 1973, the Vaca Draw Unit was terminated. Upon termination, lease NM 15092 was to continue in effect "for the original term of the lease, or for 2 years after * * * termination [of the unit plan], whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities." 43 CFR 3107.5. BLM correctly found that lease NM 15092 was extended for so long as

1/ Serial number 14-08-0001-8496.
2/ In addition to appellant, Bass Enterprises Production Co., the owners of lease NM 024368-A include Union Oil Company of California and Perry R. Bass. Each of the owners appeals BLM's decision of August 24, 1979.
3/ Serial number 14-08-0001-11593.
4/ These facts are set forth in a decision of the New Mexico State Office, dated February 2, 1972, no part of which forms the basis of the instant appeal.

its parent lease, NM 024368-A, was extended by production on the Red Hills Unit (or for so long as NM 15092 was itself producing). 5/

Rentals were paid on lease NM 15092 through May 12, 1975, 2 years after termination of the Vaca Draw Unit, and have not been paid since that time. On the basis of the above facts, BLM found that lease NM 15092 had terminated on May 13, 1975, for nonpayment of rental.

BLM erred in its holding that lease NM 15092 terminated on May 13, 1975, for nonpayment of rental. The automatic termination provision of section 31, Mineral Leasing Act, as amended, does not apply to a situation where, due to other contingencies, additional rental may become due on a date other than the anniversary date of a lease. C. W. Trainer, 69 I.D. 81 (1962). BLM should have billed the lessees for a full year's rental due February 1, 1975, or at least notified the lessees of NM 15092 that additional rental was due for the balance of the lease year from May 13, 1975, to the anniversary date of the lease, February 1, 1976. However, as full rental was not paid on or before February 1, 1975, for the lease year commencing on that date, the lease did terminate by operation of law on that date under the provisions of section 31, Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1976).

Appellant correctly acknowledges that rental was due after May 12, 1975. The minimum royalty provisions authorized by subsections (d) and (j) of 30 U.S.C. § 226 (1976) are triggered by the discovery of oil or gas in paying quantities on a lease or by the allocation of production to certain lands within a unit. Neither subsection is applicable to NM 15092. On May 12, 1975, lease NM 15092 did not have within its boundaries an actual discovery of oil or gas in paying quantities. Nor was it part of a unit to which production had been allocated. It did, however, have a term coextensive with lease NM 024368-A, and lease NM 024368-A was both producing and unitized.

Appellant maintains that lease NM 15092 is not subject to automatic termination for nonpayment of rentals. As set forth above, 30 U.S.C. § 188(b) (1976) states that a lease on which there is no

5/ While not precisely on point, Solicitor's Opinion, M-36592 (Jan. 21, 1960), is helpful in understanding what the "original term" of lease NM 15092, as that phrase is used in 30 U.S.C. § 226(j) (1976) and 43 CFR 3107.5, might be. When lease NM 15092 was created by the segregation of lease NM 024368-A on September 30, 1971, lease NM 024368-A was in its extended term by reason of production within the Red Hills Unit. The original term of lease NM 15092 included the entire, though indefinite, period which lease NM 024368-A had to run as of the date of segregation. See also Ann Guyer Lewis, 68 I.D. 180 (1961), and Solicitor's Opinion, M-36758 (Oct. 25, 1968).

well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law upon the failure of a lessee to pay rental on or before the anniversary date of the lease. Appellant does not maintain that there actually exists a well capable of production on NM 15092. Instead, appellant asks that we apply to the facts at hand this Department's view that actual production anywhere on a unit is constructive production everywhere on the unit. Solicitor's Opinion, M-36629, 69 I.D. 110 (1962). Appellant argues that production (and implicitly a well capable of production) exists on NM 15092 by reason of the fact that these lands were at one time part of the Red Hills Unit, a unit which has maintained production at all relevant times. 6/

The problem with appellant's argument is that it overlooks the segregation of lease NM 024368-A on September 30, 1971. On that date, a part of lease NM 024368-A was committed to the Vaca Draw Unit. This commitment of less than all of NM 024368-A caused a segregation of that lease. 30 U.S.C. § 226(j) (1976). Thereafter, leases NM 024368-A and NM 15092 were distinct leases administered entirely independent of each other. Solicitor's Opinion, M-36592 (Jan. 21, 1960). The lands in lease NM 15092 were no longer part of the Red Hills Unit.

Appellant is in effect asking this Board to find that lands which were at one time immune from automatic termination by reason of their inclusion in a producing unit retain this immunity after they have been eliminated from the unit and segregated from their parent unit lease. No authority cited by appellant goes this far, and we decline to so hold.

Appellant calls to our attention Solicitor's Opinion, M-36629, supra, which sets forth in some detail this Department's position on the subject. Therein, the Solicitor writes: "Existing departmental interpretation thus leads clearly to the conclusion that the automatic termination provision [of 30 U.S.C. § 188(d) (1976)] does not apply to a unitized lease where there is a producible well anywhere on the unit" (Emphasis added). This opinion overruled Solicitor's Opinion, M-36531 (Oct. 27, 1958), and its supplement (July 20, 1959) which held that unitized leases outside a participating area were subject to automatic termination for failure to pay rentals, despite the fact that the unit area contained a well capable of producing oil or gas in paying quantities. Although Solicitor's Opinion, M-36629, represents a liberalization of the view set forth in M-36531, it does not go as far as appellant would have this Board go. In each case or opinion cited by appellant, the fiction that production anywhere on a unit is production everywhere on the unit has never been extended to a lease

6/ A variation of this argument is raised in Murphy Corporation, 71 I.D. 233 (1964).

which is separate and distinct from any lease subject to the unit. During its inclusion in the Red Hills Unit, the lands now described in NM 15092 were immune from automatic termination by reason of production elsewhere on the unit. Upon their elimination from the unit and their segregation in lease NM 15092, the lands formed no part of any lease subject to the Red Hills Unit Agreement, nor were such lands themselves subject to that agreement. When these events occurred, the immunity from automatic termination on the next anniversary date of the lease was lost.

Furthermore, the statute authorizing reinstatement of an oil and gas lease terminated automatically by operation of law for failure to pay on or before the anniversary date the full amount of rental due is limited to those leases for which the rental was paid or tendered within 20 days after the anniversary date, and as to which the Secretary is satisfied that such failure to pay the rental timely was either justified or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Although BLM was remiss in not advising the lessees of NM 15092 that the lease term would continue beyond the extension granted because of termination of the Vaca Draw Unit Agreement, and in not calling for payment of a full year's rental due February 1, 1975, it was incumbent upon the lessees to maintain the rental account for the lease on the anniversary date of the lease, February 1, 1975, notwithstanding the failure of BLM to present a correct billing notice. Notices of rental are merely courtesy notices and are not required by law. William M. Seiskal, 42 IBLA 304 (1979); Apostolos Paliombeis, 35 IBLA 180 (1978); Energy Reserve, Inc., 30 IBLA 11 (1977).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed as modified.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge